

**MASSOOD & BRONSnick, LLP**

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Attorneys for: Plaintiff

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

NEW JERSEY BACK INSTITUTE a/s/o  
JUAN RODRIGUEZ,

Plaintiff(s),

v.

HORIZON BLUE CROSS BLUE SHIELD  
INSURANCE COMPANY; ABC CORP.  
(1-10) (Said names being fictitious and  
unknown entities),

Defendant(s),

CIVIL ACTION NO.: 12-4985

**CIVIL ACTION**

**ANSWER TO COUNTERCLAIM**

Plaintiff/Counterclaim Defendant, New Jersey Back Institute a/s/o Juan Rodriguez (hereinafter "NJ Back") hereby answers the Counterclaim by Defendant/Counterclaim Plaintiff Horizon Blue Cross Blue Shield of New Jersey and files the following Affirmative Defenses:

**I. THE PARTIES**

1. NJ Back neither admits nor denies the allegations contained within paragraph 1 and leaves Horizon to its proofs.
2. Admitted

**II. THE SUBMISSION OF CLAIMS FOR PAYMENT**

3. Admitted.
4. Admitted.
5. Admitted.

**A. Charges Submitted by Counterclaim-Defendant**

6. NJ Back neither admits nor denies the allegations contained within paragraph 6 and leaves Horizon to its proofs.
7. NJ Back neither admits nor denies the allegations contained within paragraph 7 and leaves Horizon to its proofs.
8. NJ Back neither admits nor denies the allegations contained within paragraph 8 and leaves Horizon to its proofs.
9. NJ Back neither admits nor denies the allegations contained within paragraph 9 and leaves Horizon to its proofs.

**B. Horizon's Proper Processing and Denial of the Claim under the Terms of the Applicable Health Benefits Plan**

10. NJ Back denies each and every allegation contained in paragraph 10 of the Counterclaim.
11. NJ Back denies each and every allegation contained in paragraph 11 of the Counterclaim.
12. NJ Back denies each and every allegation contained in paragraph 12 of the Counterclaim.
13. NJ Back denies each and every allegation contained in paragraph 13 of the Counterclaim.
14. NJ Back denies each and every allegation contained in paragraph 14 of the Counterclaim.

**C. Counterclaim-Defendant's Repeated Requests for Payment and Horizon's Mistaken Overpayment of the Claim**

15. NJ Back admits the allegation contained in paragraph 15 of the Counterclaim.
16. NJ Back neither admits nor denies the allegation contained in paragraph 16 and leaves Horizon to its proofs.
17. NJ Back admits that Horizon approved an amount and paid same to NJ Back but denies that same was paid erroneously.
18. NJ Back denies each and every allegation contained in paragraph 18 (improperly numbered as 19) of the Counterclaim.

19. NJ Back denies each and every allegation contained in paragraph 19 (the second paragraph 19) of the Counterclaim.

**D. Authority to “Recap” the Mistaken Payment Pursuant to N.J.S.A. §17B:27-44.2(d)(10)**

20. NJ Back neither admits nor denies the allegations contained in paragraph 20 and leaves Horizon to its proofs.

21. NJ Back denies each and every allegation contained in paragraph 21 of the Counterclaim.

22. NJ Back denies each and every allegation contained in paragraph 22 of the Counterclaim.

**COUNT ONE**  
**Recap of Payment Pursuant to HCAPPA**

23. NJ Back repeats and re-alleges each and every response to the prior allegations as if set forth fully at length herein.

24. NJ Back denies each and every allegation contained in paragraph 24 of the Counterclaim.

25. NJ Back denies each and every allegation contained in paragraph 25 of the Counterclaim.

26. NJ Back denies each and every allegation contained in paragraph 26 of the Counterclaim.

27. NJ Back denies each and every allegation contained in paragraph 27 of the Counterclaim.

WHEREFORE, Counterclaim Defendant NJ Back demands judgment against Plaintiff:

- A) Dismissing the Counterclaim in its entirety;
- B) For counsel fees and cost of suit;
- C) Any other relief the court may deem equitable and just.

**COUNT TWO**  
**Unjust Enrichment**

28. NJ Back repeats and re-alleges each and every response to the prior allegations as if set forth fully at length herein.
29. NJ Back denies each and every allegation contained in paragraph 29 of the Counterclaim.
30. NJ Back denies each and every allegation contained in paragraph 30 of the Counterclaim.

WHEREFORE, Counterclaim Defendant NJ Back demands judgment against Plaintiff:

- A) Dismissing the Counterclaim in its entirety;
- B) For counsel fees and cost of suit;
- C) Any other relief the court may deem equitable and just.

**AFFIRMATIVE DEFENSES**

**FIRST SEPARATE DEFENSE**

Any alleged breach resulted from circumstances and conditions beyond the control the Counterclaim Defendants.

**SECOND SEPARATE DEFENSE**

The Counterclaim Defendant did not breach any contractual or other obligation to Counterclaim Plaintiff.

**THIRD SEPARATE DEFENSE**

The Complaint herein fails to state a claim for which relief can be granted.

**FOURTH SEPARATE DEFENSE**

The Counterclaim Defendant were not given notice of any alleged breach within a

reasonable time after Counterclaim Plaintiff knew or ought to have known of such allegations.

**FIFTH SEPARATE DEFENSE**

Counterclaim Plaintiff has failed to mitigate any alleged damages.

**SIXTH SEPARATE DEFENSE**

Lack of subject matter jurisdiction.

**SEVENTH SEPARATE DEFENSE**

Counterclaim Plaintiff's claim is barred by the Statute of Frauds.

**EIGHTH SEPARATE DEFENSE**

If it is determined that a certain agreement was made, then the Counterclaim Defendants refer to the entire agreement for the contract between the parties and relies upon its provisions.

**NINTH SEPARATE DEFENSE**

Counterclaim Plaintiff's claim is barred by the doctrine of unclean hands.

**TENTH SEPARATE DEFENSE**

Counterclaim Plaintiff's claim is barred by the Statute of Limitations.

**ELEVENTH SEPARATE DEFENSE**

Counterclaim Plaintiff is estopped from proceeding with the alleged cause of action.

**TWELFTH SEPARATE DEFENSE**

Counterclaim Plaintiff is guilty of laches.

### **THIRTEENTH SEPARATE DEFENSE**

The allegations as to the Counterclaim Defendant are frivolous in nature and as such are subject to provisions of New Jersey Frivolous Lawsuit Statute, and the Counterclaim Defendant reserve the right to move for dismissal of the Complaint, as well as seek penalties against Counterclaim Plaintiff on said ground.

### **FOURTEENTH SEPARATE DEFENSE**

If it is determined that Counterclaim Defendant is liable for any damages to Counterclaim Plaintiff pursuant to the Complaint, Counterclaim Defendant should be entitled to a credit or offset for damages Counterclaim Defendant incurred as a result of Counterclaim Plaintiff's conduct.

### **FIFTEENTH SEPARATE DEFENSE**

Counterclaim Plaintiff's claims are barred by lack of personal jurisdiction.

### **DESIGNATION OF TRIAL COUNSEL**

Andrew R. Bronsnick, Esq. is hereby designated as trial counsel on behalf of Plaintiff.

MASSOOD & BRONSnick, LLC  
Attorneys for Plaintiff

s/ Andrew R. Bronsnick

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ANDREW R. BRONSnick, ESQ.

Dated: September 21, 2012

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